IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CRIMINAL REVISION PETITION NO. 252/2004

BHUPENDRA PAL SINGH Vs. STATE OF RAJASTHAN & ORS.

Date of order: 17.01.2007.

HON'BLE MR. K.S. RATHORE, J.

Mr. Surendra Sharma for the accused-petitioner.
Mr. Ashwani Kumar Sharma, P.P. for the State.

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This revision petition under Section 397 r/w Section 401 Cr.P.C. is directed against the order dated 28.08.2003 passed by the Additional Chief Judicial Magistrate No.5, Kota in Case No. 1116/2002 under Section 138 of the Negotiable Instrument Act, by which the application filed by the petitioner has been dismissed.

The petitioner by way of the application submits that the complaint under Section 138 of the Negotiable Instruments Act is not maintainable as competent person has not filed the complaint. Learned counsel for the petitioner in support of his submissions has placed reliance on the judgment rendered by the Andhra Pradesh High Court in the case of ***S.P. Sampathy and etc. Vs. Smt. Manju Gupta and another etc., reported***

in 2002 Cri.L.J. 2621, wherein the High Court of Andhra Pradesh has held that Since Power of Attorney holder has no entity in terms of Section 142- Power of Attorney holder would not be a holder in due course of the cheque.

Although the Court has considered the aforementioned judgment and the averments made on behalf of the petitioner that the judgment relied by the Court below has been considered in this judgment rendered by the Andhra Pradesh High Court.

Be that as it may, without expressing any opinion on the merits of the case, I deem it proper to quash and set-aside the impugned order dated 28.08.2003 with direction to hear the arguments on application afresh and consider the law properly and then pass order afresh after giving opportunity of being heard to the parties in accordance with the provisions of law.

With these observations, the revision petition stands disposed of. As the matter is pending since 2004, therefore, the Court below is expected to decide the application expeditiously but in any case not beyond the period of three months from the date of passing of this order.

(K.S. RATHORE),J.

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